

CASE NO. 15-16626

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MANUEL de JESUS ORTEGA MELENDRES, *et al.*, Plaintiffs

v.

JOSEPH M. ARPAIO, Sheriff of Maricopa County,
Arizona; *et al.*, Defendants

and

DENNIS L. MONTGOMERY, Putative Intervenor

From the United States District Court
For the District of Arizona
The Honorable G. Murray Snow, Presiding
Case No. CV-07-2513

MOTION TO CONSOLIDATE THIS
APPEAL No. 15-16626 WITH APPEAL No. 15-16440

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**MOTION TO CONSOLIDATE APPEALS AND WAIVE
SEPARATE BRIEFING**

Pursuant to Federal Rules of Appellate Procedure (“FRAP”) Rules 3(b)(2) and 31(i), and Circuit Rule 28-4, the Appellant respectfully moves the Court to

- A. Consolidate this Appeal No. 15-16626 with Appeal No. 15-16440, both of which arise from *Melendres v. Arpaio* in the U.S. District Court for the District of Arizona (“District Court”), Case No. CV-07-2513, before the Honorable G. Murray Snow, Presiding Judge.
- B. Allow the Appellant in Appeal No. 15-16626 to dispense with filing a separate brief and waive the requirement under the Court’s order of August 17, 2015, for Appellant to file a separate brief by relying upon the brief in Appeal No. 15-16440, and
- C. Allow the Appellant in Appeal No. 15-16626 to file only a supplementary brief and supplementary appendix limited to the additional pleadings and orders that arose only in Appeal No. 15-16626, and avoid redundancy and waste.

and for his grounds states as follows:

Both Appeal No. 15-16440 and Appeal No. 15-16626 present the same request for Appellant and Putative Intervenor Dennis L. Montgomery for the admission *pro hac vice* of his out-of-state attorneys and the granting of his other

motions which those attorneys filed for him in the District Court below.

In both Appeal No. 15-16440 and Appeal No. 15-16626, the legal questions, governing law, and legal issues are exactly the same. They have already been briefed in Appellant's opening appellate brief on the merits in Appeal No. 15-16440. In both Appeal No. 15-16440 and Appeal No. 15-16626, the factual details of the application of attorney Larry Klayman and attorney Jonathon Moseley are similar, though their applications reflect their individual professional qualifications and histories. In both Appeal No. 15-16440 and Appeal No. 15-16626, the procedural details and events in the applications of Montgomery's attorneys Klayman and Moseley are very similar, although the application by Klayman arose from additional pleadings and events occurring subsequent to the denial of the application by Moseley.

As a result, a full opening appellate brief on the merits and associated Excerpt of the Record in Appeal No. 15-16626 would be mostly redundant of and repetitive to the brief already filed on October 27, 2015, in Appeal No. 15-16440, wasteful and unnecessarily burdensome. Such redundant filings would burden the Court unnecessarily as well as the parties.

Accordingly, the Appellant respectfully moves the court to consolidate these appeals, waive the requirement for a full brief on the merits and excerpt of the record containing repetitive contents, and instead order only a supplementary brief

and supplementary excerpt of the record setting forth only the additional documents unique to the *pro hac vice* application of Klayman subsequent to the denial of the *pro hac vice* application of Moseley.

In Appeal No. 15-16440, from *Melendres v. Arpaio*, Putative Intervenor Dennis L. Montgomery filed his Motion for Intervention of Right on May 7, 2015, and simultaneously in support thereof his attorney Jonathon A. Moseley filed an application for admission *pro hac vice* as out-of-state counsel on May 7, 2015. Moseley filed a clarification on May 13, 2015. No opposition was filed.

On May 14, 2015, the District Court denied Montgomery's motion for intervention and the application of his attorney Jonathon Moseley to be admitted *pro hac vice* as his counsel in the case in the District Court below. (However, the District Court's denial was expressly without prejudice and permitted Moseley to reapply. Moseley reapplied on May 19, 2015.)

On May 19, 2015, the Appellant and his attorney Moseley filed their Motion for Reconsideration of Motion for Admittance Pro Hac Vice of Jonathon A. Moseley and Memorandum of Law in Support Thereof, in which Moseley again made application for admission *pro hac vice*.

The District Court finally denied those motions on July 10, 2015. The Appellant timely appealed by his notice of appeal on July 15, 2015, and filed an opening appellate brief on the merits here on October 7, 2015.

Meanwhile, in Appeal No. 15-16626, from the same case *Melendres v. Arpaio*, on July 17, 2015, Putative Intervenor Dennis L. Montgomery's attorney Larry Klayman filed his application to appear *pro hac vice* on behalf of Montgomery. On July 20, 2015, Larry Klayman appeared at a previously-scheduled status conference on the record. On July 28, 2015, the Plaintiffs in the lawsuit filed their Plaintiff's Opposition to Motion for Admission Pro Hac Vice of Larry Klayman.

The District Court then also denied Larry Klayman's motion for *pro hac vice* admission on August 11, 2015, orally from the bench. Appellant and Klayman timely filed their notice of appeal on August 12, 2015.

In denying Klayman's application for admission *pro hac vice*, the July 28, 2015, Opposition of the Plaintiffs in the District Court below, the comments of Judge Snow in the July 20, 2015, status conference, and Judge Snow's August 11, 2015, order denying Klayman's motion for admission *pro hac vice* all emphasized their view that the legal and factual reasons for denying Klayman's application were essentially the same (in their opinion) as the reasons for denying Moseley's application.

Accordingly, the appeals should be consolidated and the briefing presented to minimize redundancy, repetition, and expense.

Dated: November 18, 2015

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2015, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the Ninth Circuit's CM/ECF system, causing it to be served upon the following counsel of record in the case through CM/ECF:

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DENNIS L. MONTGOMERY,

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Appeal No. 15-16626

PROPOSED ORDER

THIS CAUSE is upon the Appellant's motion to consolidate this Appeal No. 15-16626 with Appeal No. 15-16440, pursuant to Federal Rules of Appellate Procedure ("FRAP") Rules 3(b)(2) and 31(i), and Circuit Rule 28-4, both of which appeals arise from *Melendres v. Arpaio* in the U.S. District Court for the District of Arizona ("District Court"), Case No. CV-07-2513, before the Honorable G. Murray Snow, Presiding Judge.

Both appeals involve the denial of respective motions of two different attorneys who applied for admission *pro hac vice* for Putative Intervenor Dennis L. Montgomery and the motions filed for him by those attorneys. In each appeal, the governing law, motions filed, procedural posture, and details are nearly identical. Appellant Montgomery contends that the denial of two different attorneys further informs his appeal here.

Upon consideration of Appellant's motion and the Court being fully apprised of the

circumstances, arguments of counsel, law and details,

IT IS HEREBY ORDERED that –

- A. This Appeal No. 15-16626 is hereby consolidated with Appeal No. 15-16440
- B. Appellant may file for this Appeal No. 15-16626 a supplemental brief and supplemental excerpt of the record addressing only the additional details of the application for admission *pro hac vice* of Larry Klayman not already addressed and/or contained within the brief and excerpt of the record already filed for Appeal No. 15-16440.
- C. Appellant may rely upon the contents set forth in the brief and the documents contained in the excerpt of the record already filed in Appeal No. 15-16440 in support of this Appeal No. 15-16626 to avoid repetition and redundancy.
- D. Appellees may similarly limit any response to only the supplemental content filed herein or address both appeals in a consolidated response.

Signed this ____ day of November, 2015.

United States Court of Appeals Judge